

**BEFORE THE DEPARTMENT OF NATURAL RESOURCES
NOTICE OF PUBLIC HEARING
FH-23-09**

NOTICE IS HEREBY GIVEN that pursuant to ss. 23.11(1), 29.014(1), 29.041, 29.519, and 227.11(2)(a), Stats., interpreting ss. 23.09, 29.011(1) and (2), 29.014(1), 29.041 and 29.519, Stats., the Department of Natural Resources will hold a public hearing on proposed Natural Resources Board Order No. FH-23-09 pertaining to commercial fishing for lake whitefish in Lake Michigan, including Green Bay.

Analysis of the proposed rule. The proposal would amend section NR 25.06 (2) (e) 2., of the Wisconsin Administrative Code to increase the total allowable annual commercial harvest of lake whitefish from each of the three fishing zones in the Wisconsin waters of Lake Michigan. All three harvest limits, and therefore all individual licensee whitefish catch quotas, would be increased by 16.6 %. The overall total allowable commercial harvest for the entire lake would be increased by 410,000 pounds, or from 2,470,000 pounds to 2,880,000 pounds. For the three zones, the increases are as follows: Zone 1 – 225,518 to 262,952 pounds, Zone 2 – 2,029,662 to 2,366,569 pounds, and Zone 3 – 214,820 to 250,479 pounds. The increases for each zone are allocated according to the same proportions as the current zone allocations of the lake-wide harvest limit.

Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule. Federal regulations do not apply; the State of Wisconsin has exclusive authority to regulate commercial fishing in Wisconsin waters of the Great Lakes.

Comparison of similar rules in adjacent states (Minnesota, Iowa, Illinois and Michigan). Of these states the only meaningful comparison is harvest limits established for lake whitefish from Michigan waters of Lake Michigan. The Department adopted the methods employed by the State of Michigan and the Chippewa/Ottawa Resource Authority under terms of a negotiated Consent Decree issued by a United States District Court in Michigan. Iowa has no Great Lakes waters. The harvest of lake whitefish from Minnesota waters of Lake Superior is not regulated by harvest limits. There is no commercial harvest of lake whitefish from Illinois waters of Lake Michigan.

Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule. This rule was based on modern conventional methods for assessing fish populations and for setting harvest limits. Fish stocks were assessed using standard data from commercial harvests employing statistical-catch-at-age modeling. Harvest limits were set based on the estimated population using standards and methods also used for state and tribal whitefish fisheries in the State of Michigan.

Analysis and supporting documentation that the agency used in support of the agency's determination of the rule's effect on small businesses under s. 227.114, Stats., or that was used when the agency prepared an economic impact report. Businesses engaged in commercial fishing and wholesale fish dealing may be affected by the rule. However, the Department currently has no basis for quantifying the economic impacts of the rule.

Effects on small business, including how the rule will be enforced. This rule is of interest to commercial fishers and was initiated in response to their expressed concerns. The rule will be enforced by Department Conservation Wardens under the authority of chapters 23 and 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers and follow up investigations of citizen complaints.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., the proposed rule may have an impact on small businesses. The initial regulatory flexibility analysis is as follows:

- a. Describe the type of small business that will be affected by the rule. Commercial fishing businesses will be affected.
- b. Briefly explain the reporting, bookkeeping and other procedures required for compliance with the rule. None.
- c. Describe the type of professional skills necessary for compliance with the rule. None.

The Department's Small Business Regulatory Coordinator for this rule may be contacted at Peter.Flaherty@Wisconsin.gov or by calling (608) 266-8254.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

Monday, October 26, 2009 at 5 pm Jane Greene Room, Door County Public Library, 107 S. Fourth Ave., Sturgeon Bay, Wisconsin.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

The rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the rule may be submitted via U.S. mail to Mr. William Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707-7921. Comments may be submitted until October 31, 2009. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the rule and fiscal estimate may be obtained from Mr. Horns.

Dated at Madison, Wisconsin September 28, 2009

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By /S/
Matthew J. Frank, Secretary